

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
 WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments,)	MM Docket No. 02-____
FM Broadcast Stations)	RM-_____
(St. Michaels and Cambridge, Maryland))	

To: Chief, Media Bureau

PETITION FOR RULEMAKING

CWA Broadcasting, Inc. ("CWA"), the licensee of Station WINX-FM, Cambridge, Maryland (the "Station" or "WINX"), by its attorneys and pursuant to Section 1.420(i) of the Commission's Rules, hereby files this Petition for Rulemaking ("Petition"). CWA seeks to modify the Station's community of license from St. Michaels, Maryland to its original community of license, Cambridge, Maryland, thereby permitting the Station to upgrade its facilities and to provide better service to the public. In support thereof, CWA states as follows.

Certain facts, raised previously by CWA in connection with the Petition for Rulemaking it filed in 1992, requesting a change in the Station's community of license from Cambridge to St. Michaels ("Original Petition"), and in connection with its subsequent efforts to dismiss that proceeding, bear significantly on the instant rulemaking proceeding to return the Station's community of license to Cambridge. CWA filed the Original Petition due to problems it faced in securing zoning that would permit the construction of an antenna supporting structure for the

¹ MM Docket No. 92-291, RM-8133

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new Station CWA could not find a location that would allow the construction of a tower that would result in compliance with the requirements of Section 73.315 for the minimum field strength of the Station's signal over its community of license, Cambridge, Maryland. Since there was available to CWA an existing tower in the vicinity of St. Michaels that would enable CWA to meet the field signal strength requirement at St. Michaels, but not Cambridge, CWA filed the Original Petition seeking a change in the Table of Allotments and the Station's community of license. Thus, tower availability rather than local service considerations underpinned CWA's submission of the Original Petition.

The requested changes were denied by the former Mass Media Bureau, both initially and on reconsideration. *See Report and Order* in MM Docket No. 92-291, 9 FCC Rcd 2767 (1994), *recon. denied*, 10 FCC Rcd 8080 (1995) (denying requested reallocation because CWA had received in a comparative hearing a "decisionally significant preference that would not have been granted had the comparative contest been for a station at the new proposed community"). On application for review, however, the Commission reversed the Bureau and granted CWA's request for the change in community of license from Cambridge to St. Michaels. *Memorandum Opinion and Order* in MM Docket No. 92-291, 12 FCC Rcd 3504 (1997) (accepting and granting the reallocation proposal based upon CWA's qualitative enhancements vis-a-vis St. Michaels and given that the reallocation resulted in preferential arrangement of allotments).

During the five years that the case progressed from the filing of the Original Petition to final decision by the Commission, circumstances changed materially regarding the availability of an antenna supporting structure for CWA. CWA was able to secure zoning for a transmitter site south of Trappe, Maryland, located roughly halfway between Cambridge and St. Michaels. This structure allowed CWA to provide the requisite signal field strength over Cambridge. On

January 9, 1997, the Commission granted CWA a construction permit (File No. BMPH-1996070118) for this site. The Station was constructed, received a license (File No. BLH-19990715KB) and is currently operating from the Trappe site.

Taking into consideration the January 9, 1997 grant of the modification of the Station's construction permit, CWA, in April 1997, submitted to the Commission a Petition for Clarification ("Clarification Petition"). Therein, CWA explained that circumstances had changed and that CWA no longer required the change in community of license since the Station was now serving Cambridge. No action was taken by the Commission in connection with the Petition for Clarification, and CWA neither modified its license to specify St. Michaels as the Station's community of license, nor constructed a facility to serve St. Michaels.

In July 2002, CWA filed a Petition to Dismiss seeking dismissal of the Original Petition proceeding based on its position that the Petition for Clarification was a petition for reconsideration of the allotment changes and that there was no reason for the changes to be made. Through its Petition to Dismiss, CWA sought to return to the FM Table of Allotments status quo with Cambridge as the Station's community of license, and thereby to permit upgrade of the Station to a Class B1 facility in accordance with CWA's modification application currently pending before the Commission (File No. BPH- 20020718ABE). In *Cambridge and St. Michaels, Maryland*, DA 02-2696, ¶5 (released October 18, 2002) ("Order"), the Media Bureau denied CWA's Petition to Dismiss, rejecting CWA's claim that the Original Petition remained pending in light of CWA's Petition for Clarification and the Commission's non-treatment thereof. The Bureau stated instead that "[a]t this juncture, the appropriate procedure would be for CWA Broadcasting to file a petition for rule making proposing the reallocation of Channel 232A back to Cambridge." *Id.* Accordingly, CWA now requests that the Commission issue a

notice of proposed rulemaking proposing modification of the Station's community of license from St. Michaels to Cambridge.

The Commission reviews petitions to amend the FM Table of Allotments according to its FM allotment priorities,² and requires that proposed reallotments result in a preferential arrangement of allotments thereunder. *See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990) ("Community Modification Reconsideration"). In connection with its allotment priorities, the Commission prohibits the removal of a community's sole local service on grounds that such a change presumptively disserves the public interest. *See Community Modification Reconsideration*, 5 FCC Rcd at 7096. However, as the Commission itself has determined, removal of an unconstructed station from a community does not present the same concerns as the loss of service represented by the removal of an operating station. *See Sanibel and San Carlos Park, Florida*, 10 FCC Rcd 7215 (1995); *Pawley's Island and Atlantic Beach, South Carolina*, 8 FCC Rcd 8657 (1993); and *Glencoe and LeSueur, Minnesota*, 7 FCC Rcd 7651 (1992). In the case of an unbuilt Station, the community has not experienced service and or developed reliance thereon, therefore reallotment of the unbuilt Station cannot be construed as a loss, and the "no removal" rule need not be applied. *Id.*

As set forth above, CWA has never modified its license to specify St. Michaels, or constructed a facility based on service to St. Michaels. Similarly, the Commission has never changed the Station's community of license in its own database – the CDBS database evidences

² The Commission's FM priorities, as set forth in the *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 91-92 (1982), include: (1) first aural service; (2) second aural service; (3) first local service; and (4) other public interest matters. The Commission gives equal weight to priorities (2) and (3). *Id.*

Cambridge, not St. Michaels, as the Station's community of license. See Exhibit A. Because no license issued for the St. Michaels facility, and because that facility was never constructed, reallocation of the Station does not violate the Commission's "no removal" policy.

Furthermore, the Commission has stated that in "rare circumstances where removal of a local service might serve the public interest" it will "entertain requests to waive the prohibition" on removing a community's sole local service. *Community Modification Reconsideration*, 5 FCC Rcd at 7096. CWA submits that the Commission should not apply the prohibition here where CWA is proposing a return to the Station's original allotment under the FM Table of Allotments, rather than an amendment thereof. **As** described above, the change in the Station's community of license to St. Michaels was undertaken on the basis of a technical problem unrelated to the Commission's allotment priorities. The technical problem was disposed of long ago, and with it the need to modify the Station's licensed community. Under the Station's current broadcast operations, St. Michaels does not, practically-speaking, receive first local service from the Station. Instead, CWA has operated the Station in a manner consistent with designation of Cambridge as its local community.

CWA submits that the Commission should now conform the FM Table of Allotments to the Station's current broadcast practice, what CWA proposed in its comparative hearing, and what the FM Table of Allotments previously had been by officially reinstating Cambridge as the Station's community of license. The public interest would be served by the return of the Station's community of license to Cambridge. The respective public benefits of the Cambridge and **St.** Michaels allotments are comparable enough that the Media Bureau preferred the Cambridge allotment in creating the FM Table of Allotments as well as throughout the Original Petition proceeding. The Commission reversed the Media Bureau, and changed the Station's

community of license, only at a point when that modification was no longer necessitated by technical considerations and thus no longer in furtherance of the public interest in optimal broadcast service. Thus, the current situation does not present an issue of allotment priorities between two communities so much as the opportunity to undo a reallocation that was not needed in the first place and was never carried out. Under these circumstances, a return to the status quo, without consideration of priorities, is necessary and proper.

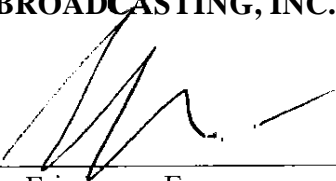
The public interest would further be served by the upgrade of the Station's facilities made possible by the Station's reallocation to Cambridge. The upgrade of the Station to a Class B1 facility proposed by CWA in its Upgrade Application would not diminish current service to St. Michaels. Instead, as demonstrated by the Engineering Statement attached hereto as Exhibit B, the proposed community change together with the proposed upgrade would result in a net service gain while improving the level of service to St. Michaels, and would thus better serve the public interest.

In light of these considerations, the Commission should grant the instant Petition to change the Station's community of license back to Cambridge, Maryland, where it had been for years. Modifying the Station's community of license to Cambridge neither implicates the Commission's FM allotment priorities nor violates its policies against removing first local service from a community. Instead, modification of the FM Table of Allotments in this instance simply reinstates the pre-Original Petition status quo, acknowledges the practical reality of the Station's current broadcast operations and is consistent with CWA's commitments in securing its construction permit, allows an upgrade of the Station's facilities, and thereby advances the public Interest.

WHEREFORE, for the foregoing reasons, CWA Broadcasting, Inc. respectfully requests that the Commission grant the Petition for Rulemaking and issue a notice of proposed rulemaking proposing modification of Section 73.202(b) of the Commission's Rules to change the channel 232 allotment for St. Michaels to Cambridge, Maryland, and modify the license of Station WTNX-FM accordingly

Respectfully submitted,

CWA BROADCASTING, INC.

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November 27, 2002

EXHIBIT A

[Help](#) | [Home](#)

Station Search Details

Call Sign:	WINX-FM
Facility Id:	14774
Community of License:	CAMBRIDGE, MD
Service:	FM
Fac Type:	FM STATION
Status:	LICENSED
Status Date:	02111/2000
Frequency:	94.3
Channel:	232
Lic Expir:	1010112003
Licensee:	CWA BROADCASTING. INC.
Address:	35 OLD SOLOMONS ISLAND RD
Address 2:	
City:	ANNAPOLIS
State:	MD
Zip Code:	21401
Engineering Data	View Engineering Data
Call Sign History	View Call Sign History

EXHIBIT B

Eneinecrine Statement
PETITION FOR RULEMAKING TO AMEND §73.202(b)
TO CHANGE CLASS AND COMMUNITY OF LICENSE
prepared for
CWA Broadcasting, Inc.
WINX-FM Ch 232B1 Cambridge, Maryland
Facility ID 14774

Introduction

CWA Broadcasting, Inc. ("CWA") is the licensee of WINX-FM, Ch. 232A, Cambridge, Maryland. CWA has filed an application (FCC File No. BPH-2002071 **XABE**) for a one-step upgrade for WINX to change from Class A to **Class B1** and to improve its service to the communities of Cambridge and St. Michaels, Maryland. A peculiarity in the sequence of construction events for WINX and CWA's previous requested change in the Commission's Table of Allotments associated with the construction has resulted in WINX (formerly WFBR) being licensed to serve Cambridge, Maryland but allotted to serve St. Michaels, Maryland. With the instant petition, CWA **seeks** to restore the status quo of Cambridge, Maryland as the community of license since the facility to serve St. Michaels was not built. CWA has **determined** that, with the continuity of license of Canihridge, it is able to upgrade the Class of the allotment **from** Class A to Class B1 with a clear, fully spaced reference point within the requisite distance in Cambridge. The only identifiable, fully spaced reference point for a Class B1 facility does not provide the requisite principal community coverage of St. Michaels. However, the Class B1 facility proposed by CWA, **implemented** with a directional antenna at the existing, licensed WINX site, would encompass Cambridge and, for the first time, **95 % of** the area and **100%** of the population of St. Michaels, with a principal community coverage contour. **Thus**, such a proposal will improve the level of service to St. Michaels and Cambridge and the coverage area for WINX.

Proposed Reference Location

The instant petition proposes **to** change the Class of WINX from a Class A to Class B1 facility on Channel 232. The proposed fully spaced allotment "reference point," is located at North Latitude: 38° 29' 39", West Longitude: 76° 13' 21". This reference point meets all pertinent minimum distance separation requirements of §73.207 and the community of license coverage requirements of §73.315 toward Canihridge, Maryland.

Prepared November, 2002 by Mark B. Peabody

Cavell, Mertz & Davis, Inc.

Engineering Statement

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Coverage of Principal Community

As mentioned above and shown here with **Figure 1**, the 70 dB μ principal community coverage contour of the licensed WINX, as predicted pursuant to the FCC Rule: and the standard FCC Curves. §73.333, does not encompass St. Michaels but does encompass Cambridge. Assuming "uniform terrain," a maximum Class B1 facility (25 kW/100m AAT) will produce an "omnidirectional" 70 dB μ contour with a 23.2 km radius. As shown on **Figure 1**, a circle with a 23.2 km radius from the proposed reference point encompasses Cambridge, but falls 10.8 km short of encompassing St. Michaels. **Figure 1** also depicts the principal community coverage contour which would result with the pending §73.2 IS, one step upgrade application for a Class B1 WINX facility proposed by CWA. The 70 dB μ contour in the pending WINX application encompasses Cambridge and 95% of the area and 100% of the population of St. Michaels.

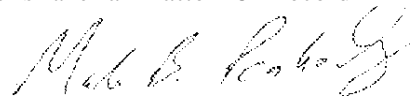
Gain in Coverage

The licensed 60 dB μ protected service contour of WINX encompasses 2,139 km² of land area and 69,087 people (2000 U.S. Census). A 44.7 km circle¹ from the proposed reference point encompasses 4,319 km² of land area and 221,503 people (2000 U.S. Census). The facility proposed with the pending Class B1 application for WINX would produce a 57 dB μ protected service contour which encompasses 3,603 km² of land area and 143,562 people (2000 U.S. Census).

Certification

I, Mark B. Peabody, hereby certify that the foregoing Engineering Statement was prepared by me or under my direction on behalf of *CWA Broadcasting, Inc.* and that it is true and correct to the best of my knowledge and belief and that my qualifications are a matter of record with the Federal Communications Commission

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Mark B. Peabody November 27, 2002

¹ An "omnidirectional" 57 dB μ Class B1 protected service contour based on uniform terrain, an HAAT of 100m and an ERP of 25 kW extends 44.7 km.

Prepared November, 2002 by Mark B. Peabody

Cavell, Mertz & Davis, Inc.

